

an edge operative to separate the film drawn off the roll into individual sheets for use; and a base member between the roll and the edge over which the film is drawn, with the first surface facing outwardly, and wherein the base member [being proportioned] defines an area of at least 40 square inches to permit placement of the palmar surface of an average adult human [a] hand thereagainst to be covered by the flexible, stretchable film [thereagainst].

Remarks

Election/Restriction

Applicant continues to traverse the restriction requirement from the last amendment. Applicant amended independent method claim 10 to include the step of "providing a dispenser according to claim 1." On page 2, paragraph 2 of the Office Action, the Examiner states that Group II (claims 10, 13-14 and 17) "can be practiced by another materially different apparatus which does not inquire the specific housing of Group I as shown in a newly-submitted Figure 5C ...". How, Applicant asks, can the method claims be practiced "by another materially different apparatus" when direct reference is made to the very claim containing such apparatus? That Figure 5C shows a half-cylindrical support is of no consequence, since independent apparatus claim 1 specifies a base member proportioned to permit placement of the hand to be covered thereagainst, without requiring that the base member be flat. In other words, independent apparatus claim 1 covers all base members, so long as sufficient area is provided for placement of a hand to be covered thereagainst. For this reason, Applicant continues to traverse the restriction requirement, and respectfully requests that the requirement be withdrawn at this time, and that all pending claims be duly examined.

Drawings

Changes have been made on page 16 of the specification so that the housing is consistently referred to as 52, and the film is referred to as 51. Reference 56 may be found on page 17, line 13.

Claim Rejections – 35 U.S.C. §112

On page 4 of the Office Action, the Examiner rejects to the recitation “a housing to receive a roll of flexible film defining a central axis.” Applicant sees no foundation for this objection. Clearly, the roll of flexible film defines a central axis, as does every cylinder; it is the roll of film which defines the axis, not the housing.

The Examiner further objects to “a hand to be covered,” questioning whether the hand is fully covered or partially covered. The answer is neither. Claim 1 states that the base member is proportioned “to permit placement of a hand to be covered thereagain.” In other words, the base area (unlike the prior-art references) is at least as large, or preferably larger, than the area of an adult human hand, as shown in Figure 5A, even without the hand being covered in its entirety.

As to claims 3 and 8, since claim 1 includes positive recitations about the film itself, claims 3 and 8 add further limitations to that aspect of Applicant’s invention. In particular, claim 3 adds the limitation that the film includes perforations and that the edge is physically configured to separate material into perforated sheets. In the case of claim 8, the flexible film is at least partially transparent, enabling a user to visualize the base member therethrough. Applicant wishes to know which parts of these dependent claims the Examiner does not understand.

The Examiner further objects to the “degree of resiliency” of the base member, stating that “it is either resilient or it isn’t.” Applicant respectfully disagrees, since the base member could have

areas of resiliency and areas of non-resiliency. For example, in the case of a hand-shaped depression, which Applicant has set forth and claimed, the area around the depression may be resilient, whereas the area within the depression may be non-resilient.

As to claim 9, the Examiner states that "it is not clear if the indicia is hand-shaped." The answer is that it does have to be hand-shaped, such that claim 9 need not be so specific about this limitation. For example, words instructing a user to "place hand here" would also qualify as hand-positioning visual indicia which is not hand-shaped.

In summary, Applicant has made no alterations to the claims under 35 U.S.C. §112, second paragraph, feeling that further modifications are unnecessary for this reason.

Claim Rejections – 35 U.S.C. §102

Claims 1-3, 5 and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by Cherrin, U.S. Patent No. 3,989,175. In the invention of the '175 patent is a dispenser for tape of the type having a repeating pattern of lesser adhesive zones 56 and more adhesive zones 54, presumably for use as labels. When such tape is stripped from the roll, it is relatively easy to unwind with respect to the areas of lesser adhesive, but then slows down when the areas of greater adhesive are reached.

The novelty of the '175 patent is a mechanism whereby, as tape is pulled from the roll, the middle of each more adhesive zone 54 is positioned across a cutting blade 26, so that when the user senses the greatly increased resistance, the user knows that the blade is positioned more or less automatically at a line for severing each tape segment (col. 4, lines 1-37). The '175 patent meets this objective by a translatable edge holder (28), or through the use of a roll holding means causing

the point where the tape leaves the roll to occur at a set distance from the cutting blade (Figures 4 and 5).

The '175 patent has nothing to do with dispensing flexible, stretchable films of the type prescribed and now more clearly claimed by Applicant to be used as a hand covering. For this reason, what the Examiner is calling the "base member" of the '175 patent is not an area against which a human hand would be placed, but rather, is simply a place to set distancing between the cutting edge and the roll without sagging, as the Examiner correctly points out. It is Applicant's position that, for this reason, Cherrin does not teach or disclose a base member being proportioned to permit placement of a hand to be covered thereagainst, as originally claimed by Applicant. However, with the addition of an area limitation in the claim, namely, 40 squares inches or less, rejection under §102 is clearly inappropriate. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Claim 6 stands rejected under 35 U.S.C. §103 as being unpatentable over Cherrin in view of Curtiss, Jr. The Examiner concedes that Cherrin is silent as to a resilient base. To address this deficiency, the Examiner adds Curtiss, Jr. which teaches a semi-cylindrical support member 24 which the Examiner appears to consider as "resilient." Applicant respectfully disagrees with this assessment, and this grounds this rejection, for several reasons. First, a support member of Curtiss, Jr. is not resilient, but rather is simply semi-cylindrically shaped to provide clearance beneath a waiting ticket so that it can be engaged between a person's thumb and index finger (col. 2, lines 37-45). Secondly, there is no teaching or suggestion whatsoever in the Cherrin patent that the invention of Cherrin would benefit in any way from the use of a resilient member, since the platform upon which the tape of Cherrin rides is simply for longitudinal distancing purposes.

Thirdly, the Examiner's statement that the use of Curtiss, Jr.'s support member 24 would "restrict sagging" does not make any sense, since, in point of fact, the semi-cylindrical shape of Curtiss, Jr.'s base member would allow, even enhance, sagging if applied to the apparatus of Cherrin.

Based upon the foregoing amendments and comments, Applicant believes all claims are now in condition for allowance. Questions regarding this application in general or this response in particular may be directed to the undersigned at the telephone or facsimile numbers provided.

Respectfully submitted,

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